IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1416 OF 2005

1.Smt. Purnima Shantilal Dedhia
(JAIN)

2.Shri.Shantilal Dhanji Dedhia
(JAIN)

3. Shri. Darshan Shantilal Dedhia
(JAIN)

all petitioners are residing at
Plot No.174, Purna Shanti, Nathalal
Parekh Marg, Wadala, Mumbai:31. ...Petitioners.

V/s.

1.The Maharashtra Housing & Area
Development Authority(MHADA),
a Body Corporate incorporated under
the Maharashtra Housing & Area
Development Act, 1976, having its
office at Griha Nirman Bhawan,
Bandra(E), Mumbai:400 051.

2. The Chief Executive Officer
having his office at Nirman Bhawan,
Bandra(E), Mumbai.

3. The Deputy Engineer
Co-Op Cell(M.B.R. & R. BOARD)
Mumbai Building Repairs and
Reconstruction Board, a Unit of
Respondent No.10, having its
Office at Griha Nirman Bhuvan,
Bandra(E), Mumbai:400 051.

4. The Divisional Engineer,

F/South Ward, having his
office at the Maharashtra Housing
& Area Development Authority,
New BMC, Dr.B.A. Road, Parel,
Mumbai: 400 012.

5. The State of Maharashtra
having its office at Mantralaya,
Mumbai: 400 032.

6. Smt.Malti Madhav Desai,
Purna Shanti Niwas, formally
known as "Narmada Niwas",
4th Floor, Parmar Guruji Marg,
Parel, Mumbai:400 012.

7. Narmada Niwas Co-operative
Housing Society(Proposed)
through its Chief Promoter,
Mrs.Vijaya Bhimrao Patil,
having its office at 7, Narmada Niwas,
Parmar Guruji Marg, Parel, Mumbai. ...Respondents

Mr.G.V. Murti for Petitioners.
Mr.Milind More AGP for Respondent Nos.1 to 5.
Mr.Bhandary for Respondent No.6.
Mr.P.G. Karande for Respondent No.7.

CORAM : V.M. KANADE, J.
DATED : 26rd APRIL, 2007.

ORAL JUDGMENT:

1. Heard learned counsel for the Petitioners and the learned counsel for the Respondents.

2. The Petitioners are challenging the letter dated 29th

March, 2005 which is addressed to the Petitioners and is sent by Deputy Engineer Co-Op. Cell, M.B.R. & R.B. Board. It is the case of the Petitioners that the Petitioners purchased property consisting of land and building and said auction sale was confirmed by the Bombay Municipal Corporation. In the meantime, tenants sent proposal to the Board U/s.103-B of the MHADA Act. The Petitioners initially sent letter to MHADA authorities and requested them to sent copy of proposal which was sent by the tenants. It is the case of the Petitioners that building does not require any repairs and as such question of acquisition of said building for repairs and re-construction did not arise. In reply to the said representation, the Deputy Engineer, M.B.R. & R.B. Board informed the Petitioners that the proposal was being processed further and that objection for the acquisition which was taken by the Petitioners was pre-mature. In the said letter MHADA has stated that "The tenants occupants of property known as Narmada Niwas No.30, Parmar Guruji Marg, Parel, Mumbai 12 have applied for acquisition of property under Section 103B of MHADA Act for the purpose its better preservation. The proposal is scrutinized

and it is seen that the application prima facie fulfills requirements laid down for acquisition of property under section 103B MHADA Act and thus the proposal is being processed further."(Emphasis supplied).

3. Learned counsel for the Petitioner invited my attention to the provisions of Section 103B of the MHADA Act and submitted that before proposal was finalized the land lord ought to have been heard. He submitted that observation made by the MHADA that he was prima facie, satisfied that the proposal fulfilled requirements laid down under the act was patently incorrect. Documents were filed by the tenants after 29/03/2005. He submitted that, therefore, MHADA authorities had already arrived at a conclusion before scrutinizing the documents. He submitted that U/s.93 sub clause 5 of S.L.A.O. did not have any authority to cancel proposal which was made by the tenants. He submitted that therefore, the Petitioners did not have opportunity of satisfying the Board that said proposal made by the tenants was liable to be rejected. He further submitted that MHADA may be directed to give hearing to the Petitioners.

4. Learned Counsel appearing on behalf of the Respondents submitted that validity of the provisions of said Act had been upheld by the Division Bench of this court. He submitted that this aspect was considered by the Division Bench in para 13 of the said judgment. Division Bench has observed that said provision did not contemplate that before or at the time of scrutinizing proposal, landlord should be heard.

5. In my view, perusal of impugned letter clearly shows that proposal which is made by the tenants U/s.103 B of the said Act is being scrutinized and no final decision has been taken by MHADA. In the light of judgment of the Division Bench in the case of **Property Owners' Association v. The State of Maharashtra reported in 1992(1) Bom.C.R.152**, question of giving hearing to the Petitioners does not arise at this stage. In my view, therefore, there is no reason to interfere with letter dated 29/03/2005. Writ Petition, in my view, therefore is liable to dismissed. In the circumstances, there shall be no order as to costs.

6. At this stage, learned counsel for the Petitioners seeks

leave for extension of interim order which is passed by the court. Request is refused. Request for extension of stay is rejected.

V.M. KANADE, J.